

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JAMES GEMELAS , On Behalf of Himself)	No. 1:08-cv-00236
and All Others Similarly Situated,)	
)	
Plaintiff,)	
)	<u>CLASS ACTION</u>
v.)	
)	Judge Dan Aaron Polster
THE DANNON COMPANY, INC.,)	
)	
Defendant.)	
_____)	

**SUPPLEMENTAL DECLARATION OF JOHN R. CLIMACO IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL AWARD OF AGREED
ATTORNEYS' FEES AND EXPENSES**

John R. Climaco declares that:

1. I am the founding Principal and Chairman of Climaco, Wilcox, Peca, Tarantino & Garofoli Co., L.P.A., currently a twelve member law firm with offices in Cleveland and Columbus, Ohio. I am one of the attorneys representing the Plaintiffs and Class Members. I submit this supplemental declaration in support of my firm's application for an award of attorneys' fees and reimbursement of expenses in connection with services rendered.
2. My firm is one of the Plaintiffs' Class Counsel.
3. Attached as Exhibit 1 is my firm's Professional Resume.
4. Throughout my 43 year career, I have been personally involved in complex litigation, including class actions against the tobacco industry, pharmaceutical and medical device manufacturers, welding consumable manufacturers, airlines as well as securities and financial

litigation which have resulted in more than \$203 Billion Dollars in jury verdicts and settlements for my clients and all members of the Classes involved.

5. On January 29, 2008, my firm, along with attorneys Frank Piscitelli and Scott Kalish filed the original *Gemelas* litigation. Subsequently, we joined together with attorneys Timothy G. Blood, Jayne A. Goldstein, Jonathan M. Stein, David Pastor, Leslie E. Hurst and Thomas J. O'Reardon, III who had filed *Wiener v. The Dannon Company, Inc.*, Case No. CV08-00415, in the Central District of California. From the beginning of this litigation, Class Counsel for Plaintiffs aggressively prosecuted this case and vigorously represented the best interests of Plaintiffs and the Class. In the interest of the Class, we have consistently sought to maximize our efficiency while at the same time diligently representing the interests of the Class. The result was Settlement that provided great benefits for the Class in a timely manner and is recognized as the largest food product settlement to date. My Firm has been involved in all phases of the overall *Dannon* litigation.

6. We were deeply involved in the research and preparation which ensured that the mediation and negotiations would be a success and reach a just result for the Class. We participated in the mediation sessions before the Honorable Dickran M. Tevrizian (retired) on July 14 and 15, 2008.

7. We participated intensive discovery.

8. During the mediations and throughout all negotiations, we demanded injunctive relief and insisted that the false representations made by Dannon including use of the words “clinically proven”, “scientifically proven” and “immunity” be removed from all advertisements, including all labels and other packaging. On behalf of Mr. Gemelas, we refused to agree to any settlement which would allow the Defendant to continue to use “scientifically proven”, clinically proven” and “immunity” in labeling and advertising.

9. I personally played a significant role in defeating the united efforts put forth by objecting attorneys¹ to undue the largest class action food products settlement in history². I personally negotiated the settlement with the “Serial Objectors”.

10. In addition I personally led the effort to defeat the frivolous objections including the filing of a meritless appeal with the Sixth Circuit by Class Member Clyde Farrel Padgett. As a result of my efforts³ and personal negotiations with class member Clyde Padgett instead of my deposing him, he reluctantly accepted my \$5,000 firm check which was delivered to him on October 7, 2010, at Houston International Airport by my associate Patrick G. Warner. My success in resolving Class Member Padgett’s meritless appeal allowed class members to immediately begin receiving claim payments.

11. The total number of hours spent on this litigation by my firm through June 24, 2011 is 1,909.75. The total lodestar amount for attorney and professional hours based on the rate regularly charged by our firm attorneys and professionals is \$818,127.50. The hourly rates shown below are the usual and customary rates charged for each individual in all of our class action cases.

A breakdown of our firm’s total lodestar is as follows:

January 10, 2008 through December 31, 2008:

NAME	HOURS	RATE	LODESTAR
John R. Climaco	272.00	\$600.00	\$163,200.00
John A. Peca	65.75	525.00	34,518.75
David M. Cuppage	5.00	485.00	2,425.00
Scott D. Simpkins	29.25	485.00	14,186.25
Lisa A. Gorshe	38.00	485.00	18,430.00

¹ Cleveland attorneys Edward F. Siegel; Francis E. Sweeney, Jr.; Edward W. Cochran; Sam Cannata; Columbus attorney Charles H. Cooper, Jr.; California attorney J. Darrell Palmer; and Missouri attorney Kenneth E. Nelson.

² See D.E. No. 96 where this Honorable Court stated: “The only objections to the settlement were lodged by what now appear to be “serial objectors”.

³ My efforts included a demand for document production and scheduling Mr. Padgett’s deposition for October 7, 2010 at the Houston International Airport.

NAME	HOURS	RATE	LODESTAR
Dawn M. Chmielewski	7.75	450.00	3,487.50
Jennifer L. Gardner	7.00	280.00	1,960.00
Alyson M. Dudkowski	108.25	280.00	30,310.00
Rachel S. Opatik	135.75	280.00	38,010.00
Margaret Shults	110.00	280.00	30,800.00
Gwen M. Hennessey	39.75	160.00	6,360.00
Gina A. Bruno	9.75	160.00	1,560.00
Nicholas J. DiPiero	6.00	65.00	390.00
Patrice M. Kilo	4.25	65.00	276.25
Timothy W. Clary	132.25	65.00	8,596.25
Joseph X Muska	7.50	65.00	487.50
TOTAL	978.25		\$354,997.50

January 1, 2009 through June 9, 2010:

NAME	HOURS	RATE	LODESTAR
John R. Climaco	261.00	\$650.00	\$169,650.00
John A. Peca	65.00	600.00	39,000.00
Thomas J. Tarantino	6.00	550.00	3,300.00
David M. Cuppage	3.00	550.00	1,650.00
Scott D. Simpkins	19.00	550.00	10,450.00
Patrick G. Warner	25.000	500.00	12,500.00
Nicholas J. DiPiero	71.50	280.00	20,020.00
Gwen M. Hennessey	5.25	160.00	840.00
Gina A. Bruno	44.25	160.00	7,080.00
Patrice M. Kilo	.50	65.00	32.50
TOTAL	500.50		\$264,522.50

June 10, 2010 through June 24, 2011:

NAME	HOURS	RATE	LODESTAR
John R. Climaco	148.75	\$650.00	\$96,687.50
John A. Peca	20.00	600.00	12,000.00
David M. Cuppage	3.00	550.00	1,650.00
Scott D. Simpkins	3.50	550.00	1,925.00
Margaret M. Metzinger	3.00	525.00	1,575.00
Dawn M. Chmielewski	.25	485.00	121.25
Patrick G. Warner	123.75	550.00	68,062.50
Gwen M. Hennessey	3.25	160.00	520.00
Gina A. Bruno	83.25	160.00	13,321.00
Patrice M. Kilo	11.75	65.00	763.75
Timothy W. Clary	2.25	65.00	146.25
Joseph X Muska	28.25	65.00	1,836.25
TOTAL	431.00		\$198,607.50

12. My firm incurred a total of \$56,327.99 in expenses in connection with the prosecution of this litigation. Our expenses are broken down as follows:

January 10, 2008 through June 9, 2010:

EXPENSE CATEGORY	TOTAL
Meals, Hotels & Transportation	\$11,834.04
Photocopies	695.33
Postage	2.52
Telephone, Facsimile	138.57
Messenger, Overnight Delivery	524.30
Filing, Witness & Other Fees	1,205.00
Court Reporters	0.00
Lexis, Westlaw, Online Library Research	264.13
Class Action Notices/Business Wire	30,000.00
Mediation Fees	0.00
Expert/Consultants/Investigators	4,000.00
TOTAL	\$48,663.89

June 10, 2010 through June 24, 2011:

EXPENSE CATEGORY	TOTAL
Meals, Hotels & Transportation	\$1,551.23
Photocopies	324.98
Postage	2.64
Telephone, Facsimile	83.76
Messenger, Overnight Delivery	78.42
Filing, Witness & Other Fees	- 0 -
Court Reporters	215.90
Lexis, Westlaw, Online Library Research	407.17
Class Action Notices/Business Wire	- 0 -
Mediation Fees	- 0 -
Expert/Consultants/Investigators	- 0 -
Miscellaneous (Objector Clyde Padgett Payment)	5,000.00
TOTAL	\$7,664.10

13. The expenses pertaining to this litigation are reflected in the books and records of my Firm. These books and records are prepared from expense vouchers, check records, and other documents and are an accurate record of the expenses.

14. On October 18, 2010, my firm received \$544,196.00 in attorneys' fees and \$48,663.00 in expenses. Therefore, a balance of \$75,324.00 in unpaid lodestar attorneys' fees remains due our firm from the total reported through June 9, 2010.

15. My firm lodestar for June 9, 2010 through June 24, 2011 is \$198,607.50.

16. My firm's expenses for June 9, 2010 through June 24, 2011 is \$7,664.10.

17. As of June 24, 2011 our total attorney lodestar is \$818,127.50, less \$544,196.00 received for a total unpaid lodestar of \$273,931.50; plus unpaid expenses of \$7,664.10 for a total due my firm of \$281,595.60 for unpaid lodestar and expenses.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 24th day of June, 2011, at Cleveland, Ohio.

/s/ John R. Climaco

JOHN R. CLIMACO

CLIMACO, WILCOX, PECA,

TARANTINO & GAROFOLI CO., L.P.A.

55 Public Square, Suite 1950

Cleveland, Ohio 44113

Telephone: 216/621-8484

Facsimile: 216/771-1632

Class Counsel